

FCC MAIL SECTION

Federal Communications Commission

DA 98-1940

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Before the
~~DISPATCH~~ Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
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)	
Amendment of Section 73.202(b),)	MM Docket No. 98- 174
Table of Allotments,)	RM-9356
FM Broadcast Stations.)	
(Spencer and Webster, Massachusetts))	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 16, 1998

Released: September 25, 1998

Comment Date: November 16, 1998

Reply Date: December 1, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Chowder Broadcast Group LLC ("Chowder"), proposing the reallocation of Channel 255A to Spencer, Massachusetts, from Webster, Massachusetts. Chowder also requests modification of its license for Station WXXW, Webster, to be modified to specify operation at Spencer. Chowder indicated that it would file an application for Channel 255A at Spencer if the channel is allotted to the community.

2. Chowder filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Chowder states that Channel 255A may be allotted to Spencer consistent with the Commission's separation requirements and would provide full principal community service over the proposed community of license. Further, according to Chowder, the reallocation would eliminate short spacings to two stations which exist from the current licensed location as a Webster station. Chowder states that Station WXXW, Webster is presently short spaced to Station WPLR, New Haven, Connecticut, Channel 256B, and to Station WPLM, Plymouth, Massachusetts, also operating on Channel 256B. Chowder contends that any site relocation of Station WXXW which would eliminate both short spacings, would result in the transmitter site being located too far from Webster to provide the required city grade coverage. Chowder points out that the reallocation would result in providing Spencer, Massachusetts, with its first local service but will not deprive Webster of local

transmission service as Station WGPF(AM) is licensed to Webster.¹ Chowder also states that the reallocation will not remove service from a rural area to serve an urban area and that the reallocation would permit Station WXXW to operate with maximum Class A facilities, resulting in a more efficient utilization of the spectrum.

3. We believe Chowder's proposal warrants consideration. However, since Chowder proposes to relocate its transmitter site, the reallocation will result in some areas losing existing services.² According to the engineering analysis provided by Chowder, there will be a gain in service to 234,055 people with a loss of service to 33,963 people and the proposed facilities at Spencer will provide service to 4.6% of the population in the Worcester Urbanized Area. Chowder states that both the gain and loss areas are well served, receiving five or more fulltime aural services and since a staff analysis confirms that the 70 dBu contour does not encompass more than 50% of the urbanized area, Chowder will not be required to provide the Tuck showing required of petitioners whose change of community would result in service to an urbanized area.³ However, we do request Chowder to provide information showing that Spencer has the requisite indicia to qualify as a "community" for allotment purposes. See, e.g., Oak Grove, Florida, 5 FCC Rcd 3774 (1990); Hannibal, Ohio, 5 FCC Rcd 3315 (1990); and Statenville, Georgia, 5 FCC Rcd 2685 (1990). According to the 1998 edition of the Rand McNally Commercial Atlas, Spencer is a CDP with a population of 6,306 people, has a post office and a zip code. Chowder is requested to provide specific information to demonstrate that Spencer has commercial, social, economic, cultural and religious organizations, municipal services, and governmental units that identify themselves specifically with the community of Spencer and are intended to serve the residents of Spencer.

4. A staff engineering analysis indicates that Channel 255A can be allotted to Spencer consistent with the minimum distance separation requirements of the Commission's Rules at Chowder's specified site.⁴ Since Spencer is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 255A at Spencer, Massachusetts, or

¹ Station WGPF(AM) is licensed to Chowder Broadcast Group L.L.C.

² The Commission has previously stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See Change of Community MO&O, *supra*, at 5 FCC Rcd 7097.

³ Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988), Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 1052 (1995).

⁴ The coordinates for Channel 255A at Spencer are 42-11-00 and 72-02-30.

require Chowder to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. In view of the fact that the proposed allotment would provide a first local service to Spencer, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 255A to Spencer, in the event it is ultimately found to qualify as a community for allotment purposes. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Spencer and Webster, as follows:

Community	Channel No.	
	Present	Proposed
Spencer, Massachusetts	-----	255A
Webster, Massachusetts	255A	-----

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **November 16, 1998**, and reply comments on or before **December 1, 1998**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Brian M. Madden
Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D. C. 20006-1809

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review

by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.